

## **KPI MLC Information Notice MLCIN-APRIL-2013** **(MLC & Offshore Oil and Gas Industries)**

The MLC will enter force on 20.Aug.2013.

► **MLC requirements:**

The aim of the MLC 2006 is to ensure seafarers' rights to decent conditions of employment at sea and ensure that they have better information in respect of their rights and the benefit of an enhanced compliance regime. The MLC 2006 consolidates 68 existing maritime labour instruments into a single text. It will be the "fourth pillar" of the international regulatory regime for quality shipping, alongside key conventions of the International Maritime Organisation such as the International Convention for the Safety of Life at Sea (SOLAS), the International Convention on Standards of Training, Certification and Watch-keeping (STCW), and the International Convention for the Prevention of Pollution from Ships (MARPOL).

The scope of the MLC 2006 is very wide. It aims to achieve protection for all seafarers (of which there are estimated to be 1.2 million worldwide). This is reflected in the broad definition of "seafarer" as:

***"Any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies."***

The principal intention is to cover all persons employed or working on board a ship, in any capacity whatsoever, including the self-employed and, crucially, those employed by third parties.

Enforcement is to be through a combination of 'compliance awareness' at all levels, flag state control and port state control:

- ✓ From the individual seafarer's perspective, his terms of employment will be required to be contained in a single document (a "Seafarer's Employment Agreement" ("SEA")) between himself and the ship owner, he must be properly informed of his rights and the remedies available to him in the event of non-compliance with the MLC 2006, and he has the right to make complaints (onboard and onshore); in addition, ships are required to have onboard procedures for the fair, effective and expeditious handling of seafarers' complaints alleging breaches of the requirements of the MLC 2006 (including seafarers' rights). These procedures shall include the right of the seafarer to be accompanied or represented

during the complaints procedures, as well as his benefiting from safeguards against the possibility of being victimised for filing complaints in the first place;

- ✓ The ship owner will be required to implement measures that ensure compliance with the domestic regulations enacting the MLC 2006;
- ✓ The ship's master will be responsible for carrying out the owner's measures, and for keeping records evidencing implementation of the measures;
- ✓ The flag state must review the ship owner's measures and verify and certify implementation;
- ✓ Where the ship is of 500 gross tonnage or above and is engaged in international voyages or voyages between foreign ports, she will be required to carry a Maritime Labour Certificate onboard. This, complemented by a Declaration of Maritime Labour Compliance will constitute prima facie evidence that the ship has been duly inspected for compliance by the flag state and that, to the extent certified, the requirements of the MLC 2006 in relation to working and living conditions have been met;
- ✓ Flag states must also ensure that domestic regulations implementing the MLC 2006 are applied to smaller ships that are not covered by the certification system. Although not mandatory, it may be in the interests of owners of ships of under 500 gross tonnage to obtain the certificates in order to avoid what may otherwise be a more extensive port inspection;
- ✓ The concept of "no more favourable treatment" for ships of non-ratifying countries, applied through port state control, means that ships of all countries (irrespective of ratification) will be subject to inspection in the port of any state that has ratified and may be detained in port if they do not meet the minimum standards of the MLC 2006.

► **How the MLC 2006 will translate to the offshore oil and gas industry:**

It is the discretion of the administrations to decide when & how to apply the MLC 2006 to self-propelling mobile infrastructures in the offshore oil and gas industry. The following notes may be used as general guidelines in application & implementation process.

In many areas a significant part of mobile infrastructure is only governed by maritime regulations (of which the MLC 2006 will form a part) when it is repositioning to or from its place of work.

When the mobile infrastructure is attached to the seabed or a sub-sea structure, it is classed as an installation and the non-maritime regime operated by the Health, Safety & Environment Executive (HSE) applies. When it disconnects from the seabed or the sub-sea structure in order to reposition, the maritime regime shall apply.

The administrations should conclude a Memorandum of Understanding with the related industry HSE; aimed at ensuring that the most appropriate regime is applied.

Current information suggests that where infrastructure such as an Floating Production Storage and Offloading (FPSO) vessel is going to be attached to the seabed for a lengthy period, such as for over two years, the administrations may be prepared to issue an exemption from the MLC 2006 to cover the periods when it is repositioning. However, it seems that where a self-propelled Mobile Offshore (Drilling) Unit (MO(D)U) is repositioning every few months, no such exemption will be obtainable and it will be subject to the MLC 2006 whilst repositioning.

*The frequency of relocation of the infrastructure in question therefore appears to be a key factor as to whether the administrations consider that the MLC 2006 will apply to it.*

The administrations shall recognise the potential difficulties associated with a rig having to comply with both the MLC 2006 and the HSE regimes. It is recommended to examine the extent to which it is possible for the HSE standards, such as those in respect of crew accommodation, to be recognised as 'substantially equivalent' to the standards of the MLC, so that where a vessel is already compliant with the HSE standards it is also compliant with MLC standards.

However, even if substantial equivalence between the two regimes is determined, the understanding is that a vessel which is subject to both regimes, as in the case of the self-propelled MO(D)U which repositions

every two months, will still need to carry the MLC 2006 Maritime Labour Certificate and the Declaration of Maritime Labour Compliance.

The obligations under the MLC 2006 fall squarely on the shoulders of the "ship-owner". This is defined to mean the owner of the ship or another organisation or person to whom the owner has entrusted responsibility for her operation such as a ship manager, manning agent or bareboat charterer.

So far as MODUs are concerned, the "ship-owner" will be the rig owner (or another to whom it has entrusted responsibility for the rig's operation) and it is the rig owner that will owe the obligations under the MLC 2006.

Whilst there are certain limited relaxations in the definition of seafarer in the offshore context, excluding persons whose normal place of work is ashore, who spend only short periods onboard or whose work is not connected with the routine business of the rig, its scope is still very broad given that it includes the self-employed and those employed by third parties.

It appears for example that company men employed by the operator or providers of third party services contracted by it who are based on board the rig will be included. It is currently unclear whether, as a consequence, the rig owner will need to issue an SEA to each company man notwithstanding that he is an employee of, and has an existing employment contract with the operator. Such matters are subject to ongoing consultation with the offshore oil and gas industry.

It is recommended that rig-owners and operators in particular should commence a review of their contracts. From the rig-owner's point of view, as it has the potential liability under the MLC 2006 it will require comfort from the operator in future contracts that the terms and conditions of the employment with the operator comply with the standards set by the MLC 2006; for example with respect to working hours. This might be achieved through warranties given by the operator or a right of the rig-owner to inspect the employment contract, or both. The rig-owner may additionally wish to ask for indemnities from the operator in the event that the rig-owner is sued for non-compliance with the MLC 2006 and to participate as joint insured on the operator's insurance in order to have the benefit of cover for incidents such as the cost of repatriation.

As far as existing contracts are concerned those affected will wish to consider whether or not they are already in compliance and, if they are not, whether they need to be. (having in mind not least the risk of detention in the ports of ratifying countries)